

September 8, 2010

The Honorable Devin Nunes
U.S. House of Representatives
Washington, DC 20515

Regarding the House Committee on Ways and Means Subcommittee on Trade hearing on
"Enhancing U.S.-EU Trade Relations" on July 27, 2010.

Dear Congressman Nunes:

Thank you for your important question. Although I testified as co-chairman of the European-American Business Council, (EABC), my response is a personal one, since EABC does not have a position on the issue you raised.

The World Trade Organization (WTO) rules recognize Geographical Indicators (GI), while making clear that trademarks are the predominant expressions of intellectual property. While I appreciate the EU's interest in promoting GI regimes in Europe and throughout the world, it is important that such regimes not undermine legitimate rights of trademark owners. In this regard, I share your concern that some in Europe have proposed GI regimes that would trample upon the rights of American and other foreign rights-holders. Through WTO litigation and Doha negotiations, the Bush Administration resisted European efforts to over-extend the scope of GI regimes. I hope and trust that the Obama Administration will continue these efforts, as part of its comprehensive plan to protect U.S. intellectual property interests, and its laudable goal of doubling U.S. exports within five years.

I am unaware of any studies that respond to the EU's claims that GI terms are, in your words, "a superior intellectual property right that overrides longstanding copyright, patent, and trademark protections". If they do exist, the EU should produce them.

Best wishes,

Stuart E. Eizenstat
Co-Chairman
European-American Business Council



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September 7, 2010

The Honorable Devin Nunes
U.S. House of Representatives
Washington, DC 20515

**Regarding the House Committee on Ways and Means Subcommittee on Trade
hearing on “Enhancing U.S.-EU Trade Relations” on July 27, 2010.**

Dear Representative Nunes:

Thank you for your question regarding the European Union’s use of its free trade agreements (FTAs) to promote its approach to regulation, standards and intellectual property, including in particular with respect to Geographic Indications (GIs).

As the Chamber stated in its recent report entitled [The State of World Trade](#), the EU has indeed adopted an extremely energetic program to conclude such agreements with a large number of countries, and we are concerned that U.S. firms will be put at a competitive disadvantage in these markets in the absence of a corresponding FTA with the United States. This is one reason why we have called on Congress to ratify our FTAs with Korea, Colombia and Panama as quickly as possible.

In general, where the EU agreements encourage countries to adopt modern practices to regulation, using sound science and cost-benefit analysis, our exporters can also be indirect beneficiaries. In some cases, however, especially where the EU pushes the “precautionary principle” and certain EU-centric standards, we will be disadvantaged.

This is certainly true with respect to GIs, where, as you indicated, the EU has adopted an aggressive policy of promoting its approach to GIs in its FTAs. We share your concerns about this, as indicated in more detail in our response to your specific questions, below.

Accordingly, I am interested to know what you think might be our best course of action to resist the EU’s effort to clawback GI terms?

In this situation, the best defense is a good offense. Recent U.S. FTAs go beyond current protections for trademarks to apply the principle of “first-in-time, first-in-right” to all products, including those that may contain a place (geographical) name.

This means that the first company to file for a trademark is granted the exclusive right to that name, phrase or geographical place name. This sets an important precedent in opposition to the European Union's approach to geographical indications.

Accordingly, the Chamber again calls upon Congress to ratify as quickly as possible the FTAs the United States has concluded with Korea, Colombia and Panama.

Additionally, are you aware of any studies that respond to the EU's claims that GI terms are a superior intellectual property right that overrides longstanding copyright, patent, and trademark protections?

I am not aware of any such studies. This may be because they don't exist. After all, the virtue of intellectual property rights is that they incentivize innovation, experimentation, research, and development. By contrast, GIs extend a benefit to producers of a particular product for the simple fact that they are located in a particular geographical location. There is no obvious link between GIs and innovation.

Sincerely,

Peter Chase
Executive Director, Brussels Office
U.S. Chamber of Commerce

September 10, 2010

Response to Question for the Record
House Ways and Means Committee
Subcommittee on Trade
Hearing on Enhancing U.S.-EU Trade Relations, July 27, 2010

The Honorable Devin Nunes
U.S. House of Representatives
Washington, DC

Dear Congressman Nunes,

Thank you for your question regarding the European Union's use of Geographical Indicators (GIs) to secure market advantage.

As I mentioned in my testimony and prepared statement for the hearing, I am not a trade expert. My career has focused on transatlantic defense and security issues. Chairman Tanner asked me to participate in the hearing to discuss how U.S. engagement in the North Atlantic Treaty Organization (NATO) and the NATO Parliamentary Assembly (NPA) could be used to enhance transatlantic trade and economic collaboration.

I am not qualified to answer your question concerning the EU's use of GIs to gain market advantage. I'm sure several of the other witnesses can provide you with an informed response.

Respectfully yours,



Stephen J. Flanagan
Senior Vice President and
Henry A. Kissinger Chair